

1 ROBERT P. TAYLOR (SBN 46046)  
Email: rtaylor@mintz.com  
2 BRYAN J. SINCLAIR (SBN 205885)  
Email: bsinclair@mintz.com  
3 JEFFREY M. RATINOFF (SBN 197241)  
Email: jratinoff@mintz.com  
4 MINTZ LEVIN COHN FERRIS GLOVSKY AND  
POPEO, PC  
5 1400 Page Mill Road  
Palo Alto, California 94304-1124  
6 Telephone: (650) 251-7700  
Facsimile: (650) 251-7739

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8 Attorneys for Defendant,  
SOFTSCAPE, INC.

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 OAKLAND DIVISION

12 SUCCESSFACTORS, INC, a Delaware  
corporation,

13 Plaintiff,

14 vs.

15 SOFTSCAPE, INC., a Delaware corporation,  
16 and DOES 1-10, inclusive,

17 Defendants.  
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Case No. CV 08-1376 CW (BZ)

**DECLARATION OF BRYAN J.  
SINCLAIR IN SUPPORT OF  
PLAINTIFF'S MOTION FOR  
ADMINISTRATIVE RELIEF TO FILE  
UNDER SEAL ITS BRIEF AND  
DECLARATION EXHIBITS IN  
SUPPORT OF MOTION TO COMPEL  
PRODUCTION OF DOCUMENTS,  
FURTHER INTEROGATORY  
ANSWERS AND PROPER  
CONFIDENTIALITY DESIGNATIONS**

Date: September 3, 2008

Time: 10:00 a.m.

Judge: Honorable Bernard Zimmerman

Place: Courtroom G, 15<sup>th</sup> Floor

1 I, Bryan J. Sinclair, declare:

2 1. I am an attorney licensed to practice law before all courts in the State of California,  
3 and the United States District Court for the Northern District of California. I am a member of  
4 Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. ("Mintz Levin") in its Palo Alto, CA office  
5 and I, along with other attorneys at Mintz Levin, and Ronald M. Davids, are attorneys of record for  
6 Defendant Softscape, Inc. (hereinafter "Softscape" or "Defendant"). I submit this declaration in  
7 support of Plaintiff's Motion for Administration Relief to File Under Seal Plaintiff SuccessFactors,  
8 Inc.'s ("SuccessFactors" or "Plaintiff") Brief and Declaration Exhibits in Support of Motion to  
9 Compel Production of Documents, Further Interrogatory Answers and Proper Confidentiality  
10 Designations.

11 2. I have personal knowledge of the matters set forth herein except as to those matters  
12 set forth on information and belief, and as to those I am informed and believe them to be true and  
13 could and would competently testify thereto. In making this declaration, it is not my intention, nor  
14 the intention of Softscape, to waive the attorney-client privilege, the attorney-work product  
15 immunity, or any other applicable privilege.

16 3. On April 23, 2008, the Court entered a Protective Order in this case. Pursuant to  
17 Section 10 of that order, any documents filed in this action containing confidential information must  
18 be filed under seal in accordance with Civil Local Rule 79-5.

19 4. Accordingly, SuccessFactors requested that it be allowed to file under seal the  
20 following portions of the Memorandum of Points and Authorities ("Motion to Compel Brief") and  
21 Exhibits to the Declaration of Henry Z. Carbajal III ("Carbajal Declaration") in Support of  
22 SuccessFactors' Motion to Compel Production of Documents, Further Interrogatory Answers and  
23 Proper Confidentiality Designations.

24 5. Under the terms of the Protective Order, Softscape designated lines 356:1-357:6,  
25 357:8-9, 360:7-360:24, 361:8-9, 361:12-13, 361:22-362:1, 362:4-6, 362:8-13, 362:18-19 of the  
26 Transcript of the May 30, 2008 Deposition of David Watkins ("5/30/08 Watkins Transcript") as  
27 "Highly Confidential—Attorneys' Eyes Only." These excerpts appear in Exhibit 2 to the Carbajal  
28 Declaration. These excerpts bear the "Highly Confidential—Attorneys' Eyes Only" designation

1 because they contain discussion of confidential internal marketing information and competitive  
2 strategies as well as internal Softscape employment information the disclosure of which could  
3 create a substantial risk of competitive harm to Softscape which can be avoided by maintaining the  
4 confidential nature of the information. Softscape requests that the above portions of Exhibit 2 to the  
5 Carbajal Declaration be filed under seal.

6         6.         Softscape further designated lines 362:24-25, 368:8-10, 368:19-21, 368:23-369:3,  
7 369:8-12, 369:16-20, and 370:10-25 as “Confidential.” Plaintiff has attached these excerpts of the  
8 5/30/08 Watkins Transcript as Exhibit 2 to the Carbajal Declaration. This information is  
9 confidential because the testimony discloses information relating to a non-party document that has  
10 been designated as “Confidential” and Softscape would not normally reveal this information to third  
11 parties except in confidence and would undertake measures with others (if information was  
12 disclosed) to maintain its confidence. In addition, Plaintiff refers to this information in lines 3:16-  
13 21 of its Motion to Compel Brief. Softscape requests that lines 3:16-21 of Plaintiff’s Motion to  
14 Compel Brief and the above portions of Exhibit 2 to the Carbajal Declaration be filed under seal.

15         7.         Under the terms of the Protective Order, Softscape designated lines 282:1-285:15 of  
16 the 5/30/08 Watkins Transcript as “Highly Confidential—Outside Attorneys’ Eyes Only.” Plaintiff  
17 has attached these excerpts of the 5/30/08 Watkins Transcript as Exhibit 2 to the Carbajal  
18 Declaration. This information has previously been ordered sealed in the Joint Case Management  
19 Conference Statement by the Court and is “Highly Confidential-Outside Attorneys’ Eyes Only”  
20 confidential because disclosure of this information would create a substantial risk of competitive  
21 harm or serious injury to Softscape as it contains highly confidential information about acts  
22 involving a competitor. In addition, Plaintiff refers to this information in lines 4:9-10 and 17:3-5 of  
23 its Motion to Compel Brief. Softscape requests that lines 4:9-10 and 17:3-5 of Plaintiff’s Motion to  
24 Compel Brief and the above portions of Exhibit 2 to the Carbajal Declaration be filed under seal.

25         8.         Under the terms of the Protective Order, Softscape designated lines 227:23-25 of the  
26 Transcript of the May 29, 2008 Deposition of David Watkins (“5/29/08 Watkins Transcript”) as  
27 “Confidential.” Plaintiff has attached these excerpts of the 5/29/08 Watkins Transcript as Exhibit 3  
28 to the Carbajal Declaration. This information is confidential because it pertains to private

1 information of a third party entity (New Millenium Shoe) which is not known outside of the entity  
 2 and would not normally be revealed this information to third parties except in confidence and would  
 3 undertake measures with others (if information was disclosed) to maintain its confidence. In  
 4 addition, Plaintiff refers to this information in lines 3:25 and 14:21-22 of its Motion to Compel  
 5 Brief. Softscape requests that lines 3:25 and 14:12-13 of Plaintiff's Motion to Compel Brief and the  
 6 above portions of Exhibit 3 to the Carbajal Declaration be filed under seal.

7 9. Under the terms of the Protective Order, Softscape designated lines 238:4-14 of the  
 8 5/29/08 Watkins Transcript as "Highly Confidential—Outside Attorneys' Eyes Only." Plaintiff has  
 9 attached these excerpts of the 5/29/08 Watkins Transcript as Exhibit 3 to the Carbajal Declaration.  
 10 This information has previously been ordered sealed in the Joint Case Management Conference  
 11 Statement by the Court and is Highly Confidential-Outside Attorneys' Eyes Only" confidential  
 12 because disclosure of this information would create a substantial risk of competitive harm or serious  
 13 injury to Softscape as it contains highly confidential information about acts involving a competitor.  
 14 In addition, Plaintiff refers to this information in lines 4:12-16 of its Motion to Compel Brief.  
 15 Softscape requests that lines 4:12-16 of its Motion to Compel Brief and the above portions of  
 16 Exhibit 3 to the Carbajal Declaration be filed under seal.

17 10. Under the terms of the Protective Order, Softscape designated lines 112:1-8, 112:11-  
 18 15, 127:4-5, 127:22-25, 128:3-6, 128:16, 152:2-3, 152:13-22, 179:18-19, 179:22-23, 180:1, 229:5-  
 19 16 of the 5/29/08 Watkins Transcript as "Highly Confidential—Attorneys' Eyes Only." Plaintiff has  
 20 attached these excerpts of the 5/29/08 Watkins Transcript as Exhibit 3 to the Carbajal Declaration.  
 21 These excerpts bear the "Highly Confidential—Attorneys' Eyes Only" designation because they  
 22 contain discussion of confidential internal marketing information and competitive strategies as well  
 23 as internal Softscape employee information and personal information about third parties, the  
 24 disclosure of which could create a substantial risk of competitive harm to Softscape which can be  
 25 avoided by maintaining the confidential nature of the information. Softscape further designated  
 26 lines 43:5-13, 112: 9-10, 180:2-5, 203:1-25, 227:23-25, 228:3-5, 228:8-229:4, 229:17-19, 229:25,  
 27 234:1-6, 234:8-12, 234:22-24, and 262:1 as "Confidential." Plaintiff has attached these excerpts  
 28 of the 5/29/08 Watkins Transcript as Exhibit 3 to the Carbajal Declaration. This information is

1 confidential because the testimony discloses information relating to internal operational information  
2 and communications between Softscape employees and Softscape would not normally reveal this  
3 information to third parties except in confidence and would undertake measures with others (if  
4 information was disclosed) to maintain its confidence. Finally, Plaintiff refers to this information in  
5 lines 8:1-5, 10:27-28, 13:1, and 22:8:11 of its Motion to Compel Brief. Plaintiff requests that lines  
6 8:1-5, 10:27-28, 13:1, and 22:8:11 of its Motion to Compel Brief and the above portions of Exhibit  
7 3 to the Carbajal Declaration be filed under seal.

8 11. Under the terms of the Protective Order, Softscape designated lines 378:7-8, 378:11-  
9 15, 378:17-21, 378:23-379:13, 379:15-23, 379:25-380:16, 380:19-21, 380:23-25 of the 5/30/08  
10 Watkins Transcript as “Highly Confidential—Attorneys’ Eyes Only.” Plaintiff has attached these  
11 excerpts of the 5/30/08 Watkins Transcript as Exhibit 2 to the Carbajal Declaration. These excerpts  
12 bear the “Highly Confidential—Attorneys’ Eyes Only” designation because they contain discussion  
13 of confidential internal marketing information and competitive strategies and information about  
14 third parties, the disclosure of which could create a substantial risk of competitive harm to  
15 Softscape which can be avoided by maintaining the confidential nature of the information. In  
16 addition, Plaintiff refers to this information in lines 12:24-27 of its Motion to Compel Brief.  
17 Plaintiff requests that lines 12:24-27 of its Motion to Compel Brief and the above portions of  
18 Exhibit 2 to the Carbajal Declaration be filed under seal.

19 12. Softscape filed the March 26, 2008 Declaration of David Watkins in Opposition to  
20 Motion to Strike [Docket No. 58] under seal. The unredacted version is attached as Exhibit 1 to the  
21 Carbajal Declaration. Plaintiff requests that Exhibit 1 to the Carbajal Declaration be filed under  
22 seal as it was previously filed (and accepted) under seal.

23 13. Under the terms of the Protective Order, Softscape designated its Responses to  
24 Plaintiff’s First Set of Interrogatories and its Amended Responses to Plaintiff’s First Set of  
25 Interrogatories as “Confidential” in their entirety (attached as Exhibits 11 and 12 to the Carbajal  
26 Declaration). This information is confidential because the Interrogatories seek information that  
27 Softscape would not normally reveal to third parties except in confidence and would undertake  
28 measures with others (if information was disclosed) to maintain in confidence. Moreover, many of

1 the Interrogatories seek facts and information relating to the Presentation and facts and  
2 communications surrounding the Presentation which Plaintiff has designated as “Confidential”  
3 under the terms of the Protective Order. Consistent with Plaintiff’s treatment, Softscape designates  
4 the same information in a similar manner. In addition, Plaintiff refers to the content of these  
5 Exhibits in lines 14:12-13 of its Motion to Compel Brief. Softscape requests that lines 14:12-13 of  
6 Plaintiff’s Motion to Compel Brief and the Exhibits 11 and 12 to the Carbajal Declaration be filed  
7 under seal.

8 14. Under the terms of the Protective Order, Softscape designated various Powerpoint  
9 presentations (attached as Exhibits 15, 16, 17 and 18 to the Carbajal Declaration) it has produced as  
10 “Confidential” or “Highly Confidential—Attorneys’ Eyes Only.” This information is confidential  
11 because they are Softscape internal power point presentations that contain competitive/marketing  
12 information and strategies, the disclosure of which could create a risk of competitive harm.  
13 Moreover, Softscape would not normally reveal such information to third parties except in  
14 confidence and would undertake measures with others (if information was disclosed) to maintain in  
15 confidence. Similarly, these exhibits contain information relating to the Presentation which  
16 Plaintiff has designated as “Confidential” under the terms of the Protective Order. Consistent with  
17 Plaintiff’s treatment, Softscape designates the same information in a similar manner. In addition,  
18 Plaintiff refers to the metadata of these presentations in lines 6:4-5 and 6:18-7:1 of its Motion to  
19 Compel Brief. Softscape requests that lines 6:4-5 and 6:18-7:1 of Plaintiff’s Motion to Compel  
20 Brief and the Exhibits 15, 16, 17, and 18 to the Carbajal Declaration be filed under seal.

21 15. On July 22, 2008 and July 25, 2008, Softscape sent e-mails to SuccessFactors’  
22 counsel regarding discovery issues (attached as Exhibits 19 and 22 to the Carbajal Declaration).  
23 Although Softscape did not expressly designate the content as confidential, the e-mails include  
24 information that Softscape would assert is proprietary business information. This information is  
25 confidential because Softscape would not normally reveal detailed information about its internal IT  
26 infrastructure, content, architecture, and data storage to third parties except in confidence and would  
27 undertake measures with others (if information was disclosed) to maintain in confidence. Plaintiff  
28 refers to the content of these e-mails in lines 7:6-8 of its Motion to Compel Brief. Softscape

1 requests that lines 7:6-8 of Plaintiff's Motion to Compel Brief and the Exhibits 19 and 22 to the  
2 Carbajal Declaration be filed under seal.

3 16. Under the terms of the Protective Order, Softscape designated its June 20, 2008 letter  
4 from Jeffrey Ratinoff to Henry Carbajal (Exhibit 21 to the Carbajal Declaration) as "Highly  
5 Confidential—Attorneys' Eyes Only." Softscape does request that this document be filed under  
6 seal.

7 17. Under the terms of the Protective Order, Softscape designated the telephone records  
8 (attached as Exhibit 28 to the Carbajal Declaration) Bates numbered SSHC00654 as "Highly  
9 Confidential—Outside Attorneys' Eyes Only." This information is highly confidential because it  
10 contains personal telephone contact information of third parties that are not known to the public.  
11 Softscape requests that Exhibit 28 to the Carbajal Declaration be filed under seal.

12 I declare under penalty of perjury, under the laws of the State of California that the foregoing is  
13 true and correct, and that this declaration was executed in Palo Alto, California.

14 Dated: August 6, 2008

*/s/ Bryan J. Sinclair*

BRYAN J. SINCLAIR

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

SUCCESSFACTORS, INC, a Delaware  
corporation,

Plaintiff,

vs.

SOFTSCAPE, INC., a Delaware corporation,  
and DOES 1-10, inclusive,

Defendants.

Case No. CV 08-1376 CW (BZ)

**[PROPOSED] ORDER GRANTING  
PLAINTIFF'S MOTION FOR  
ADMINISTRATIVE RELIEF TO FILE  
UNDER SEAL ITS BRIEF AND  
DECLARATION EXHIBITS IN  
SUPPORT OF MOTION TO COMPEL  
PRODUCTION OF DOCUMENTS,  
FURTHER INTEROGATORY  
ANSWERS AND PROPER  
CONFIDENTIALITY DESIGNATIONS**



1 Having considered Plaintiff's Motion for Administration Relief to File Under Seal Plaintiff  
 2 SuccessFactors, Inc.'s ("SuccessFactors" or "Plaintiff") Brief and Declaration Exhibits in Support  
 3 of Motion to Compel Production of Documents, Further Interrogatory Answers and Proper  
 4 Confidentiality Designations and the supporting Declarations of Counsel, and good cause appearing  
 5 therefore, the Court, HEREBY ORDERS the following:

6 1. The following portions of Exhibit 2 to the Declaration of Henry Z. Carbajal III in  
 7 Support of SuccessFactors' Motion to Compel Production of Documents, Further Interrogatory  
 8 Answers and Proper Confidentiality Designations are HEREBY SEALED: 356:1-357:6, 357:8-9,  
 9 360:7-360:24, 361:8-9, 361:12-13, 361:22-362:1, 362:4-6, 362:8-13, 362:18-19, 362:24-25, 368:8-  
 10 10, 368:19-21, 368:23-369:3, 369:8-12, 369:16-20, 370:10-25, 282:1-285:15; 378:7-8, 378:11-15,  
 11 378:17-21, 378:23-379:13, 379:15-23, 379:25-380:16, 380:19-21, 380:23-25.

12 2. The following portions of Exhibit 3 to the Declaration of Henry Z. Carbajal III in  
 13 Support of SuccessFactors' Motion to Compel Production of Documents, Further Interrogatory  
 14 Answers and Proper Confidentiality Designations are HEREBY SEALED: 227:23-25, 238:4-14,  
 15 112:1-8, 112:11-15, 127:4-5, 127:22-25, 128:3-6, 128:16, 152:2-3, 152:13-22, 179:18-19, 179:22-  
 16 23, 180:1, 229:5-16; 43:5-13, 112:9-10, 180:2-5, 203:1-25, 228:3-5, 228:8-229:4, 229:17-19,  
 17 229:25, 234:1-6, 234:8-12, 234:22-24, and 262:1.

18 3. The following documents are HEREBY SEALED: Exhibits 1, 11, 12, 15, 16, 17, 18,  
 19 19, 22 and 28 to the Declaration of Henry Z. Carbajal III in Support of SuccessFactors' Motion to  
 20 Compel Production of Documents, Further Interrogatory Answers and Proper Confidentiality  
 21 Designations; and

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1           4.       The following excerpts from SuccessFactor's Memorandum of Points and  
2 Authorities ("Motion to Compel Brief") are HEREBY SEALED: 3:16-21, 3:25, 4:9-10, 4:12-16,  
3 6:4-5, 6:18-7:1, 7:6-8, 8:1-5, 10:27-28, 12:24-27, 13:1, 14:12-13, 14:21-22, 17:3-5 and 22:8:11.

4           **IT IS SO ORDERED.**

5           Dated: \_\_\_\_\_  
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7           \_\_\_\_\_  
8           The Honorable Bernard Zimmerman  
            United States Magistrate Judge

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